[Cite as *Tisdale v. Ohio Dept. of Transp., Dist. 12*, 2004-Ohio-3650.]

IN THE COURT OF CLAIMS OF OHIO

VENIS TISDALE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-04272-AD
THE OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) On February 17, 2004, between 1:00 and 3:00 p.m., plaintiff, Venis Tisdale, was traveling west on Interstate 90 somewhere between the East 222nd and the East 55th Street exit ramps in Cuyahoga County, his automobile struck metal debris in the roadway causing substantial property damage to the vehicle. Plaintiff described the damage-causing debris as a motor mount from a truck.

{¶2} 2) Plaintiff filed this complaint seeking to recover $1,009.67, the total cost of automotive repair, plus $54.39 for towing and car rental, and $25.00 for filing fee reimbursement. Plaintiff acknowledged he received $738.46 from his insurance carrier to cover the cost of automotive repair. Consequently, plaintiff's total damage claim shall be limited to $350.60, his total out-of-pocket expense less collateral recovery. See R.C. 2743.02(D). Plaintiff asserted he sustained all damages

claimed as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway.

{¶3} 3) Defendant denied liability based on the assertion it had no knowledge the debris was on the roadway. Defendant claimed it is unaware of how long the debris was on the roadway before plaintiff's property damage event. Defendant contended plaintiff did not introduce evidence to establish the roadway was negligently maintained. Defendant submitted records showing periodic litter patrols were conducted in the area of plaintiff's February 17, 2004, incident.

{¶4} 4) On May 14, 2004, plaintiff filed a response to defendant's investigation report. However, plaintiff has submitted no evidence to indicate the length of time the damage-causing debris was on the roadway prior to plaintiff's incident. Plaintiff asserts defendant should be liable because defendant did not erect signs on the roadway to notify the motoring public of a phone number to call to report debris or other highway defects to the defendant.

{¶5} 5) On June 7, 2004, plaintiff submitted the filing fee.

CONCLUSIONS OF LAW

{¶6} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶7} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance or construction activities to protect personal property

from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Plaintiff in the instant claim has failed to prove defendant negligently maintained the roadway.

{¶8} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (debris) and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. For constructive notice to be proven, plaintiff must show sufficient time has elapsed after the dangerous condition (debris) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD. The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the defective condition (debris) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. Evidence has shown defendant did not have any notice, either actual or constructive, of the damage-causing debris.

{¶9} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among

{¶10}different possibilities as to any issue in the case, he failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.

{¶11}Plaintiff's case fails because plaintiff has failed to show, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

{¶12}Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Venis Tisdale
135 Chestnut Lane J430
Richmond Hts, Ohio 44143

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street

For Defendant

Columbus, Ohio 43223

DRB/RDK/laa
6/8
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